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Single Bench

CF1002

# IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CHHATTISGARH)

## W.P.S. No. 5216 Of 2006

**PETITIONER** :- Emil Lakra, son of Late Shri Habil Lakra, aged about 44 years, resident of H 1/9, Narmada Nagar, Bilaspur Tahsil and District Bilaspur (C.G.).

P.R. No. 5263/06
Presented by Shri P. Aug
dated 20/9/06

**VERSUS**

**RESPONDENTS** :- 1. State of Chhattisgarh, Through The Secretary, General Administration Department, D.K.S. Bhawan, Mantralaya, G.E. Road, Raipur (Chhattisgarh),

2. Collector, Raigarh, District Raigarh (Chhattisgarh),

3. S.N. Rathore, Additional Collector, Raigarh, District Raigarh (Chhattisgarh).

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**PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA**

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**HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**

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**Single Bench: Hon'ble Shri Satish K. Agnihotri, J.**

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**W. P. No. 5216 OF 2006**

Petitioner : Emil Lakra

**Versus**

Respondents : State of Chhattisgarh & others.

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**Present**:- Shri H.B.Agrawal, learned Senior Advocate with Shri Pankaj Agrawal, counsel for the petitioner.
Shri V.V. S. Moorthy, Dy. Advocate General with Smt. Anju Ahuja, Dy. Govt. Advocate for the State/respondent No.1 & 2.

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**O R D E R**
**(10th October, 2006)**

The petitioner, in the present petition, has assailed the amended transfer order dated 12.9.2006 (Annexure P-2) whereby the initial transfer order dated 1.8.2006 was amended to the effect that the petitioner was transferred to the Office of the Additional Director, Land Records and Settlement, Chhattisgarh, Raipur.

**2.** The undisputed facts, in nut-shell are that the petitioner is a State Administrative Service Officer posted as Additional Collector. The petitioner was working on the post of Additional Collector, Ramanujganj pursuant to the order dated 21.12.2005. Thereafter, the petitioner was relieved to join the new place of posting i.e. Additional Collector, Raigarh pursuant to the transfer order dated 1.8.2006.

3. The respondent No. 3 also happens to be a Member of State Administrative Service, who was granted senior scale in the cadre. He was transferred vide order dated 28.6.2006 (AnnexureP-4)from Raigarh to Jashpur as Additional Collector. The said order dated 28.6.2006 was thereafter cancelled by order dated 30.6.2006 (Annexure P-5) and the respondent No. 3 continued to remain on the same post as Additional Collector, Raigarh.

4. By the impugned order dated 12.9.2006, the order dated 1.8.2006 whereby the petitioner was transferred as Additional Collector, Raigarh was cancelled and the petitioner was transferred on the post of Additional Director, Land Records and Settlement, Chhattisgarh.

5. Shri H.B. Agarwal, learned senior counsel with Shri Pankaj Agarwal for the petitioner submits that the impugned order dated 12.9.2006 has been issued to accommodate and adjust the respondent no. 3 as Additional Collector, Raigarh. Thus, the action of the respondent/authorities is malafide, arbitrary and unreasonable. It is further contended that the order cannot be amended during the ban period as per the transfer guidelines dated 26th May, 2006.

6. I have heard learned counsel for the petitioner and perused the records appended to the petition. The petitioner has not established malafide,

unreasonableness or arbitrariness by any document or any other evidence except on the basis of self serving statement in the pleadings to the extent that the impugned order and other orders passed earlier clearly establish that the impugned transfer order was passed with malice, and as such, the same was unreasonable and arbitrary.

**7.** The respondent No. 3 was posted as Additional Collector, Raigarh by order dated 30.6.2006. Thereafter, by order dated 1.8.2006, the petitioner was posted as Additional Collector, Raigarh. It is clear that the subsequent order dated 1.8.2006 transferring the petitioner at Raigarh was passed without considering the fact that respondent No. 3 was already working as Additional Collector at Raigarh. Therefore, it appears that it became necessary to pass the impugned order amending the earlier transfer order dated 1.8.2006 which was not capable of being implemented. The order dated 1.8.2006 was accordingly modified and a fresh order dated 12.9.2006 was issued giving proper posting to the petitioner. The Order dated 1.8.2006 was passed to post the petitioner at a place where no vacancy was available. Hence, it is not established that the impugned order was passed in exercise of malafide on the part of the respondent/authorities or the same was arbitrary and unreasonable. The petitioner has not assailed the impugned order on any other ground.

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8. The transfer guidelines dated 26-05-2006 clearly provides for amendment/cancellation of the transfer order in co-ordination with the Chief Minister. On bare reading of the impugned order dated 12-09-2006 (Annexure P-2), it is clear that the impugned order was endorsed to the Additional Chief Secretary to the Chief Minster. It is sufficient compliance of co-ordination with the Chief Minister. Thus, the impugned order is just and proper and in accordance with transfer guidelines.

9. It is well settled principle of law that transfer is an incident of service and it is for the employer to decide as to where a particular officer/employee be posted keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interfere in the transfer matter and this Court can interfere only in the case of proved malafide, non-competence of authority passing the transfer order and transfer order not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place, forever, by Court orders.

10 For the reasons aforementioned and as a result, this Petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Priya